

**FOREIGN CLAIMS SETTLEMENT COMMISSION  
OF THE UNITED STATES  
WASHINGTON, D.C. 20579**

**IN THE MATTER OF THE CLAIM OF**

**AETNA INSURANCE COMPANY**

**Under the International Claims Settlement  
Act of 1949, as amended**

**Claim No.CU -2363**

**Decision No.CU      6804**

**Counsel for claimant:**

**Chester G. Alton, Esq.**

**PROPOSED DECISION**

This claim against the Government of Cuba, filed under Title V of the International Claims Settlement Act of 1949, as amended, in the amended amount of \$173,040.27, was presented by AETNA INSURANCE COMPANY based upon the asserted loss of certain personal property in Cuba.

Under Title V of the International Claims Settlement Act of 1949 [78 Stat. 1110 (1964), 22 U.S.C. §§1643-1643k (1964), as amended, 79 Stat. 988 (1965)], the Commission is given jurisdiction over claims of nationals of the United States against the Government of Cuba. Section 503(a) of the Act provides that the Commission shall receive and determine in accordance with applicable substantive law, including international law, the amount and validity of claims by nationals of the United States against the Government of Cuba arising since January 1, 1959 for

losses resulting from the nationalization, expropriation, intervention or other taking of, or special measures directed against, property including any rights or interests therein owned wholly or partially, directly or indirectly at the time by nationals of the United States.

Section 502(3) of the Act provides:

The term 'property' means any property, right, or interest including any leasehold interest, and debts owed by the Government of Cuba or by enterprises which have been nationalized, expropriated, intervened, or taken by the Government of Cuba and debts which are a charge on property which has been nationalized, expropriated, intervened, or taken by the Government of Cuba.

Section 502(1)(B) of the Act defines the term "national of the United States" as a corporation or other legal entity which is organized under the laws of the United States, or of any State, the District of Columbia, or the Commonwealth of Puerto Rico, if natural persons who are citizens of the United States own, directly or indirectly, 50 per centum or more of the outstanding capital stock or other beneficial interest of such corporation or entity.

The record shows that claimant was organized under the laws of Connecticut and that at all pertinent times more than 50% of its outstanding capital stock was owned by nationals of the United States. An officer of claimant has certified that on or about April 25, 1967, 90 shares of its outstanding capital stock of one million shares, or .009%, were owned by nonresidents of the United States and that 99.991% was owned by United States residents (Exhibit P). The Commission holds that claimant is a national of the United States within the meaning of Section 502(1)(B) of the Act.

Claimant asserts the following losses:

4% bonds of the Republic of Cuba, 1953-1983	\$ 95,000.00
4% bonds of the Republic of Cuba, Bank Consolidation, 1960-1990	5,100.00
Cash deposited with Cuban Treasury Department (\$13,182.55 plus \$4,592.10)	17,774.65
Bank account	<u>55,165.62</u>
Total	<u>\$ 173,040.27</u>

The record shows that claimant conducted an insurance business in Cuba through a Cuban entity which acted as its agent. In order to qualify for a license to do business in Cuba, claimant was required to deposit with the Cuban authorities collateral as a guarantee that it would meet its obligations. Claimant made the following deposits in 1959 for which it was given official receipts by the Cuban Ministry of the Treasury:

1. 19 bonds of the issue known as 4% Republic of Cuba Veterans, Courts and Public Works, 1953-1983, each in the amount of \$1,000.00;

50 shares of stock in Financiera Nacional of Cuba in the amount of \$100.00 each; and \$1,000.00 in cash, for an aggregate deposit of \$25,000.00 -- Receipt No. 23347 (Exhibit F).

2. 56 bonds of the same issue as above, each in the amount of \$1,000.00; and \$19,000.00 in cash, for an aggregate deposit of \$75,000.00 -- Receipt No. 23348 (Exhibit G).

3. 20 bonds of the same issue as above, each in the amount of \$1,000.00; and cash in the amount of \$5,000.00, for an aggregate deposit of \$25,000.00 -- Receipt No. 23349 (Exhibit H).

Pursuant to Law No. 685 of August 17, 1960, Financiera Nacional de Cuba was liquidated and all obligations thereof were assumed by the Government of Cuba. (See Claim of Phoenix Insurance Company, Claim No. CU-1913.) Subsequently, the stockholders of the liquidated entity were offered the opportunity to exchange their shares of stock for 4% bonds of an issue known as Republic of Cuba Consolidated and Guaranteed Debt of the Bandes, 1960-1990 (Exhibit L). Claimant accepted the offer and received Certificate No. M-564, dated February 21, 1961, representing a bond of that issue in the face amount of \$5,000.00 as well as Certificate No. C-342, dated February 21, 1961, representing a bond of the same new issue in the face amount of \$100.00 (Exhibits M and N), the latter apparently on account of dividends due on the 50 shares of stock that were exchanged.

Claimant's Cuban agent deposited the new \$5,000.00 bond with the Cuban Treasury Department, and in lieu of Receipt No. 23347, he was given Receipt No. 89 of March 10, 1961 (Exhibit I) which was identical with the earlier one except that it showed \$5,000.00 of bonds of the new issue instead of 50 shares of stock. The new bond for \$100.00 was retained by the Cuban agent.

As a result of these transactions, claimant had on deposit bonds of the 1953-1983 issue aggregating \$95,000.00; cash in the amount of \$25,000.00; and a bond of the 1960-1990 issue in the amount of \$5,000.00. In addition,

claimant's Cuban agent held a bond of \$100.00 of the 1960-1990 issue; and further claimant owned a bank account at the Trust Company of Cuba which was later transferred to the National Bank of Cuba, discussed below.

It appears from the evidence of record that claimant had issued two insurance policies covering property of Pedro Menendez, a Cuban national, in Cuba. Menendez suffered certain losses in 1958 and 1959 apparently within the scope of the insurance policies. Subsequently, Menendez came to the United States and sued claimant for his losses, which suit is discussed hereafter.

On April 7, 1959, the Cuban Government published in its Official Gazette an announcement that Menendez's properties had been confiscated and now belong to Cuba (Exhibit D). The record includes a copy of part of claimant's answer to the Menendez suit, showing claimant's principal grounds of defense (Exhibit C). By letter of October 14, 1959, the Cuban Government served notice on claimant's Cuban agent of said confiscation and demanded payment for the losses of Menendez under the insurance policies (Exhibit C, p. 18). On January 8, 1960, the Cuban Government notified claimant's Cuban agent that in view of claimant's failure to pay Cuba for the said losses of Menendez in the amount of \$65,420.90, it had ordered the seizure of \$75,000.00 of claimant's bonds; and had suspended claimant's license to do business in Cuba until claimant restored its deposits to status quo (Exhibit C, pp. 19-22).

Claimant states that on March 30, 1960 Cuba seized the bonds, sold them and kept the proceeds (Exhibit B). The record shows, however, that the Cuban Treasury Department issued Receipt No. 23742 on February 8, 1960 indicating a deposit of \$7,182.55 in favor of claimant (Exhibit O). In analyzing these circumstances, claimant states under date of October 20, 1967, that Cuba took the 56 bonds and the \$19,000.00, represented by Receipt No. 23348, and returned \$7,182.55 thereof. On the basis of that assumption by claimant, it asserts, in part, a loss of cash in the amount of \$13,182.55, representing \$1,000.00 (Receipt No. 89), \$5,000.00 (Receipt No. 23349), and

\$7,182.55 (Receipt No. 23742). Another amount of cash assertedly on deposit with Cuban authorities in the amount of \$4,592.10 is discussed below.

The record shows that Menendez, the insured, instituted suit in the Federal courts against claimant, seeking to recover for his losses pursuant to the insurance policies issued by claimant. The principal defenses pleaded by claimant are: that Cuba owns the insurance claim as a result of the confiscation of Menendez's properties (Exhibit D); and that Cuba's claim in this respect has been fully satisfied and discharged as evidenced by a release executed by the Cuban Government (Exhibit C, pp. 13-17).

It appears from Exhibit Q that Menendez suffered two losses, one on November 20, 1958 in the amount of \$60,592.10, and the other on January 20, 1959 in the amount of \$4,828.80, aggregating \$65,420.90, the amount taken by Cuba from the proceeds of claimant's seized bonds. It further appears that while both losses were covered by policies issued by claimant, Menendez is suing only for the loss of \$60,592.10. On the basis of the foregoing, claimant has augmented its claim by that amount. Claimant states that Cuba took 56 bonds with a value of \$56,000.00, plus \$4,592.10 in cash, aggregating \$60,592.10. Since the \$56,000.00 in bonds is already included in its claim for 95 bonds of \$1,000.00 each, claimant asserts the loss of \$4,592.10 in cash. Claimant states that if it is successful in defending the suit by Menendez, its claim will be reduced by \$60,592.10 (Exhibit B).

It appears to be undisputed that Menendez suffered losses in the aggregate amount of \$65,420.90. This fact is confirmed by claimant's Exhibit Q. Therein claimant lists the two policies issued in favor of Menendez, the dates when the insured sustained the losses, and the amounts thereof attributable to each policy. Claimant adds: "Mr. Menendez is suing us only for the first listed loss, and that is all we are claiming (\$60,592.10)."

The record shows that Menendez's suit against claimant was first dismissed and upon ultimate appeal to the United States Supreme Court, the case was remanded to the United States Court of Appeals. (Aetna Insurance Co. v. Menendez, 376 U.S. 781 (1964).) In turn, the United States Court of Appeals remanded the case to the District Court. (Menendez v. Aetna Insurance Co., 340 F. 2d 708 (1965).) The Commission is advised that generally the courts of the United States have held in favor of the Cuban insureds in similar circumstances. (Blanco v. Pan-American Life Ins. Co., et al., 221 F. Supp. 219 (S.D. Fla. 1963).) Under date of June 2, 1971, claimant informed the Commission that a decision had been entered in favor of Menendez and that claimant's attorneys were proceeding with an appeal.

A copy of the decision in favor of Menendez was forwarded to the Commission under date of July 19, 1971. The decision recites that the situs of the insurance claim against claimant was not Cuba; that the court could not give effect to Cuba's expropriation decree against Menendez's property because that would be tantamount to giving extraterritorial effect to Cuba's decrees; that the "Act of State" doctrine, therefore, did not apply in this case; and that Menendez was entitled to judgment. It further appears that Pedro Menendez died on September 27, 1969 and that the Administrator, C.T.A. of his estate was substituted as party plaintiff.

A communication of July 13, 1971, from claimant's counsel states that on June 22, 1971 the United States Court of Appeals for the Fifth Circuit affirmed the judgment in favor of Menendez. Counsel further advised that on July 6, 1971 a petition for rehearing was filed with the Appellate Court, which has not yet acted upon it.

Upon consideration of the foregoing in light of the entire record, the Commission finds that on March 30, 1960 the Government of Cuba took claimant's property aggregating \$75,000.00 in value. While the earlier deposit by Cuba of \$7,182.55 in favor of claimant is not explained, it nevertheless served to reduce claimant's loss of March 30, 1960 pro tanto. Therefore, the Commission finds that claimant sustained a loss of \$67,817.45 on March 30, 1960.

Bonds of the 1953-1983 Issue

On the basis of the evidence of record, the Commission finds that claimant originally owned 95 bonds of the 1953-1983 issue in the aggregate face amount of \$95,000.00. Records available to the Commission disclose that the Cuban Government first defaulted in the payment of interest on these bonds on May 1, 1961. (See Claim of Westchester Fire Insurance Company, Claim No. CU-1703.) The Commission has held that such a default gave rise to a claim under Title V of the Act. (See Claim of Clemens R. Maise, Claim No. CU-3191, 1967 FCSC Ann. Rep. 68.)

Based upon the entire record and in the absence of evidence to the contrary, the Commission finds that the bonds in question had a value of \$1,000.00 each on May 1, 1961, the date of loss.

The Commission finds that on March 30, 1960 Cuba seized \$75,000.00 in bonds, represented by Receipt No. 23348 (56 bonds) and Receipt No. 89 (19 bonds), as noted above. The Commission further finds that on May 1, 1961, the date of loss, claimant owned 20 bonds of the 1953-1983 issue having an aggregate value of \$20,000.00.

Bonds of the 1960-1990 Issue

The evidence establishes and the Commission finds that claimant owned Republic of Cuba bonds of the 1960-1990 issue in the face amount of \$5,100.00. As already noted, claimant acquired these bonds in 1961 as a result of an exchange involving 50 shares of stock in Financiera Nacional de Cuba formerly owned by claimant.

Law 989, published in the Cuban Official Gazette on December 6, 1961 by its terms effected the confiscation of all bonds, rights and other property of persons who left Cuba or American firms no longer doing business in Cuba. The Commission finds that this law applied to claimant, and that its rights with respect to the bonds were taken by Cuba on December 6, 1961 pursuant to Law 989. (See Claim of Wallace Tabor, et al., infra, and Claim of Boger & Crawford, infra.) Accordingly, the Commission finds that claimant sustained a loss of \$5,100.00 on December 6, 1961.

Cash Deposited with Cuban Treasury Department

Based upon the evidence of record, the Commission finds that claimant had on deposit with the Cuban Treasury Department cash in the amount of \$25,000.00 (Receipt Nos. 23348, 23349 and 89). The \$7,182.55, as shown by Receipt No. 23742, issued by the Cuban authorities without claimant's knowledge or consent has been accounted for above. The Commission therefore finds that the Government of Cuba held \$25,000.00 in funds belonging to claimant.

In the absence of evidence to the contrary, the Commission finds that claimant's funds were taken by the Government of Cuba on December 6, 1961 pursuant to Law 989 (supra; see Claim of Floyd W. Auld, Claim No. CU-0020, 25 FCSC Semiann. Rep. 55 [July-Dec. 1966]; Claim of Wallace Tabor and Catherine Tabor, Claim No. CU-0109, id. at 53; and Claim of Boger & Crawford, Claim No. CU-0037). Accordingly, the Commission finds that claimant sustained a loss of cash on December 6, 1961 in the amount of \$25,000.00.

Bank Account

The evidence establishes that claimant owned a bank account at The Trust Company of Cuba which had been transferred to the National Bank of Cuba. Claimant asserts a loss of \$55,165.62 as shown in a copy of a bank statement as being the balance in its favor as of August 20, 1963 (Exhibit E). The record includes claimant's letter of January 22, 1962 to the State Department, in which claimant complained that it was unable to obtain any information concerning its bonds and cash on deposit with the Cuban Government and its account at a Cuban bank.

On the basis of the entire record, the Commission finds that claimant's bank account was taken by the Government of Cuba on December 6, 1961 pursuant to Law 989. (See Auld and Boger & Crawford, supra.)



The copy of the bank statement indicates that the account is inactive. The amount of \$55,167.37 as of June 17, 1963 appears as the previous balance, and the statement shows two subsequent entries - a bank service charge of \$3.00 on June 25, 1963, and a credit of \$1.25 as of August 19, 1963. Inasmuch as these two transactions occurred after December 6, 1961, they cannot affect the balance in claimant's favor on the date of loss.

On the basis of the entire record and considering the fact that the account had been inactive for some time, the Commission finds that the valuation most appropriate to the bank account and equitable to the claimant is that shown in the bank statement as the "previous balance" as of June 17, 1963. Accordingly, the Commission finds that the value of claimant's bank account on December 6, 1961 was \$55,167.37.

Recapitulation

Claimant's losses are summarized as follows:

<u>Item of Property</u>	<u>Date of Loss</u>	<u>Amount</u>
Proceeds of Bonds, 1953-1983	March 30, 1960	\$ 67,817.45
Bonds, 1953-1983	May 1, 1961	20,000.00
Bonds, 1960-1990	December 6, 1961	5,100.00
Cash with Cuban Government	December 6, 1961	25,000.00
Bank Account	December 6, 1961	<u>55,167.37</u>
Total		<u>\$173,084.82</u>

The Commission has decided that in certifications of loss on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be included at the rate of 6% per annum from the date of loss to the date of settlement (see Claim of Lisle Corporation, Claim No. CU-0644), and in the instant case it is so ordered as follows:


<u>FROM</u>	<u>ON</u>
March 30, 1960	\$67,817.45
May 1, 1961	20,000.00
December 6, 1961	<u>85,267.37</u>
Total	<u>\$173,084.82</u>

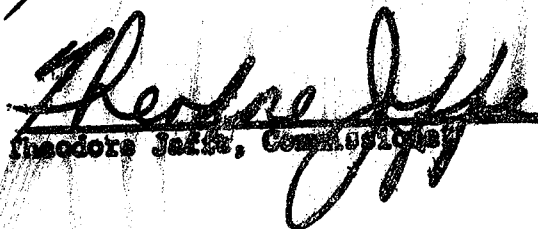
CERTIFICATION OF LOSS

The Commission certifies that AETNA INSURANCE COMPANY suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of One Hundred Seventy-three Thousand Eighty-four Dollars and Eighty-two Cents (\$173,084.82) with interest at 6% per annum from the respective dates of loss to the date of settlement.

Dated at Washington, D.C.,  
and entered as the Proposed  
Decision of the Commission

**SFP 1 1971**

  
Kyle S. Garlock, Chairman

  
Theodore Jaffe, Commissioner

The statute does not provide for the payment of claims against the Government of Cuba. Provision is only made for the determination by the Commission of the validity and amounts of such claims. Section 501 of the statute specifically precludes any authorization for appropriations for payment of these claims. The Commission is required to certify its findings to the Secretary of State for possible use in future negotiations with the Government of Cuba.

NOTICE: Pursuant to the Regulations of the Commission, if no objections are filed within 15 days after service or receipt of notice of this Proposed Decision, the decision will be entered as the Final Decision of the Commission upon the expiration of 30 days after such service or receipt of notice, unless the Commission otherwise orders. (FCSC Reg., 45 C.F.R. 531.5(e) and (g), as amended (1970).)